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city is liable in damages for such injury, provided the passenger exercised ordinary care, under all the circumstances, to avoid the negligence of the city.

2. CITY STREETS—*Defects—Notice—Reasonable time to repair.* A city is entitled to a reasonable time after the discovery of a defect in its sidewalks, within which to remove or remedy the same, and is not liable for injuries resulting from such defect before that time.

3. CITY STREETS—*Defective sidewalks—Action for personal injuries—Province of jury.* In an action by a traveller against a city for a personal injury resulting from a defective sidewalk, it is for the jury to determine, upon the circumstances of the particular case, whether the traveller, who previously had knowledge of the defect, had the right to assume that the defect had been remedied, or the city was negligent in having failed to do so. It is error in the trial court to give instructions which invade the province of the jury in these particulars.

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SUPERVISORS OF NOTTOWAY COUNTY V. J. L. POWELL AND TOWN OF CREWE.—Decided at Richmond, March 17, 1898. *Buchanan, J.* Absent, *Cardwell, J.*:

1. MANDAMUS—*When it will issue.* The writ of *mandamus* only issues where there is a clear and specific legal right to be enforced, or a duty which ought to be and can be performed, and there is no other specific and adequate legal remedy.

2. POWERS OF BOARD OF SUPERVISORS. The powers and duties of the Board of Supervisors of a county are fixed by statute, and it has no other powers than those conferred expressly or by necessary implication.

3. MANDAMUS—*County levies—Failure to collect—Adequate remedy.* *Mandamus* is not the appropriate remedy to compel a county treasurer to collect tickets for county levies placed in his hands for collection. The Board of Supervisors have a complete and adequate remedy under the provisions of chapters 36 and 37 of the Code and acts amendatory thereof, by which they can charge him with that portion of the levies which he has failed to collect, and in such case a *mandamus* will not be issued.

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GUGGENHEIMER & CO. V. ROGERS AND OTHERS.—Decided at Richmond, March 24, 1898. *Harrison, J.* Absent, *Cardwell, J.*:

1. TRUSTS AND TRUSTEES—*Sale under a second deed of trust—Expenses and costs—Application of proceeds.* The grantor in a deed of trust conveyed horses to a trustee to secure creditors, retaining possession, use, and profits for one year, and providing for sale on default after that time. A few days thereafter he conveyed the same horses to another trustee to secure a different creditor, and directs the trustee to take immediate possession of the horses, provide for their care and feed till day of sale, make sale of them as soon as practicable, and out of the proceeds to pay all costs and expenses, including the care and feed of the horses, and a commission of five per cent. to the trustee, and the residue to the creditors secured. The trustee in the second deed took immediate possession and paid for the care and feed of the horses, and, after advertising in the manner provided by the second deed, and giving notice to the creditors secured in the first deed, sold the horses at public auction. The creditors secured in the first deed were present at the sale,